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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,909	08/13/2001	Roland Cwik	1748X/50294	5184

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CROWELL & MORING, L.L.P.  
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EXAMINER

MCHENRY, KEVIN L

ART UNIT	PAPER NUMBER
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1725

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/927,909

Applicant(s)

CWIK ET AL.

Examiner

Kevin L. McHenry

Art Unit

1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,7-9,11,12 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,6,10,13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/13, 8/29, 12/28
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

***Specification***

1. The disclosure is objected to because of the following informalities:

In paragraph 14, line 4, "Possibility" is capitalized when it does not need to be capitalized.

In paragraph 21, line 2, "reeding" should be "feeding".

In paragraph 21, line 7, "evapora,tor" should be "evaporator".

In paragraph 21, line 7, "evaporator" should be "evaporating".

In paragraph 21, line 10, "cathect" seems to be an improper word. A different word, such as "coated", is suggested.

In paragraph 23, line 5, distributor is misspelled.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 16-18 provide for the use of the claimed device, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 16-18 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper

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definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

4. Claims 4, 7, 11, and 12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. In line 2 of claim 4 the language "...the boiling point in the respective outlet arrangement..." is used. This language is indefinite because it is unclear what boiling point is being referred to. For examination purposes the examiner interpreted this language to mean "the boiling point of the liquid medium in the respective outlet arrangement".

6. In lines 2-3 of claim 7 the language "...at least in a region of the outlet arrangement." is used. This language is indefinite because it is not clear if this language is citing that the distributor unit is cooled in the cited region or if the "region" refers to the spaces. For examination purposes the examiner interpreted this language to be deleted from the claim.

7. In lines 4-5 of claim 12 the language "...ducts meaning structures and sintered porous materials." This language is indefinite because it is unclear what "ducts meaning structures" means. For examination purposes the examiner interprets this language to mean "duct structures".

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***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 8, 9, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Stout (U.S.P. 5,423,952).

Stout teaches a device in which distilland is fed from a common feed to a distributor unit and then to a parallel tubes spaced apart from one another. The distributor unit has an outlet arrangement assigned to the parallel spaces with the outlets projecting into the tubes. The tubes serve as evaporator structures since the liquid distilland supplied to the tubes is at least partially evaporated in the tubes. (See U.S.P. 5,423,952; column 3, lines 5-19; column 4, lines 59-68; column 5, lines 1-11).

***Allowable Subject Matter***

10. Claims 2, 3, 5, 6, 10, 13, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 4, 7, 11, and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: the instant application is deemed to be a nonobvious improvement over the invention of Stout (U.S.P. 5,423,952). The improvement comprises: configuring the distributor unit so that flow resistance or pressure loss varies as a function of a temperature profile along the distributor unit, configuring the distributor so that flow resistance or pressure loss rises in proportion to the temperature of the distributor unit, the last stage of the distributor has a flow resistance sufficiently high that the boiling point of liquid medium in the respective outlet arrangement is higher than an ambient temperature of the outlet arrangement in the respective parallel space, configuring the distributor so that the boiling point of the medium highest at the hottest point of the distributor, configuring the distributor to be thermally uncoupled in relation to the spaces, configuring the distributor to be cooled in relation to the spaces, configuring the distributor so that the flow resistance of its last stage is higher by at least a factor of three than the flow resistance of the distributor unit upstream, configuring the distributor so that flow resistance is higher in the outlet than in downstream spaces of the device, and arranging thermally insulating structure around the distributor unit.


### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Okuda et al. (U.S.P. 5,800,673), Meijer et al. (U.S.P. 4,785,875), Ramm-Schmidt et al. (U.S.P. 6,068,730), and Ramm-Schmidt et al. (U.S.P. 5,904,807) are cited of interest for illustrating the state of the art in distributor units and evaporating devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin L. McHenry whose telephone number is (571) 272-1181. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin McHenry

**KILEY S. STONER**  
**PRIMARY EXAMINER**

*Kiley Stoner* 9/29/04